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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

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DAN COFFMAN,

Plaintiff,

*versus*

JOSEPH M. SMITH, *et al.*,

Defendants.

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CIVIL ACTION NO. 1:06-CV-825

**MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND  
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff Dan Coffman, a prisoner confined at the Stiles Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983.

The court ordered that this matter be referred to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends dismissing the action without prejudice for failure to exhaust administrative remedies.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). Plaintiff admits that he did not exhaust administrative remedies before he filed this action. The Supreme Court recently found that

exhaustion is an affirmative defense, which a prisoner is not required to plead or prove in his complaint. *Jones v. Bock*, \_\_ U.S. \_\_, 127 S. Ct. 910, 921 (2006). However, the decision in *Jones* does not preclude the district court from dismissing the complaint based on the prisoner's voluntary admission that he did not exhaust administrative remedies. Therefore, after careful consideration, the court concludes the objections are without merit.

**ORDER**

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED at Beaumont, Texas, this 23rd day of February, 2007.



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MARCIA A. CRONE  
UNITED STATES DISTRICT JUDGE